IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 572 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINBHAI PURSHOTTAMDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 572 of 2005

MS SAITA S RAJU for Petitioner No. 1-2

MS NV JOSHI, LD.APP for Respondent No. 1

MR PA JADEJA for Respondent No. 2

..... for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/05/2005

ORAL JUDGMENT

Heard Mr.S.V. Raju, learned counsel appearing

with Ms.Saita S. Raju for the petitioners; Mr.P.A. Jadeja, learned counsel appearing for the respondent no.1-orig.complainant and Ms.N.V. Joshi, ld.APP, appearing on behalf of the respondent-State.

2. Rule. The formal service of Rule is waived by Mr.P.A. Jadeja on behalf of the respondent-Complainant and Ms.N.V. Joshi, ld.APP, on behalf of the respondent nos.1 and 3. The Rule is fixed forthwith on consent.

3. By way of this petition, the petitioners have challenged the legality and validity of the order dated 21st April, 2005, invoking jurisdiction of this Court under Article 226 of the Constitution of India r/w. Section 482 of the Code of Criminal Procedure that the impugned order granting police remand for five days is bad and violative of constitutional guarantee flowing from Article 21 of the Constitution of India.

4. Mr.S.V. Raju, learned counsel appearing for the petitioners, has taken me through the memo of the petition and nature of dispute between the parties i.e. the original complainant and the present petitioners. The petitioners are the original accused of the crime registered with Ellisbridge Police Station vide C.R. No.I-595 of 2005, punishable under Sections 466, 467, 471, 417, 420, 507 and 114 r/w. Section 120(b) of the Indian Penal Code. The allegations in the complaint are serious in nature. However, according to Mr.Raju, in reality the real dispute is between the landlord and tenant and the allegation is that the petitioners-accused-tenants have forged some documents so that the same can be used for financial gain by placing them before the nationalized bank and the petitioners-accused can obtain loan for their business which is running in the name and style of "M/s.Prakash Textiles Pvt. Ltd." As per the complainant-landlord, the alleged offence has been committed any time between 10th March, 2004 and 17th July, 2004. The FIR is of 20th August, 2004.

5. Having considered the contents of the complaint and other aspects emerging from record, it is clear that the relation between the complainant and the main accused is of landlord and tenant; and the said company of the petitioners-accused is enjoying the very property as a tenant since 1968. It is argued by Mr.Raju that by increasing rent by Rs.4000/- per month, they had obtained permission from the complainant-landlord to put their leasehold right not the land, under mortgage and thus, the dispute is of civil nature on the other hand.

According to the complainant-landlord, no such permission either has been requested or accorded but the petitioners-accused-tenants have attempted to create document with an intention to defraud the complainant as well as the bank.

6. After registration of the complaint, the petitioners-accused approached appropriate Court for anticipatory bail and ultimately this Court (Coram : D.N. Patel, J) while dealing with Criminal Misc. Application under Section 438 of the Code of Criminal Procedure, by order dated 11th February, 2005, granted anticipatory bail to the petitioners-accused. The order passed by this Court is a detailed speaking order and the Court granted advance bail on the conditions mentioned in para:7 of the said order. It is not necessary to discuss the facts in detail because the Court has dealt with the crux of the dispute between the parties in the order granting anticipatory bail. A copy of the said order is at Annexure-C of the petition.

7(i) As submitted by Ms.N.V. Joshi, ld.APP, after the order of anticipatory bail, the petitioners were formally arrested by the police and enlarged on bail in compliance of the order passed by this Court on 22nd February, 2005.
7(ii) However, the allegation made by the Investigating Officer is that the petitioners have failed in cooperating with the investigation and therefore, the Investigating Officer prayed for police remand/permission for custodial interrogation before the competent Court on 1st March, 2005. The ld.Metropolitan Magistrate after hearing the parties granted police remand of the petitioners-accused for five days. However, as it was prayed for by the petitioners, the order was placed under suspension and the same is under challenge by way of this petition.

8. The Court is not satisfied with the allegations made by the Investigating Agency that the petitioners have not cooperated with the investigation because no specific document is shown to the Court that the petitioners were ever called after 22nd February, 2005 for interrogation. No copy of written intimation sent to the petitioners-accused has been shown to the Court and according to Mr.Raju, some original documents have been given to the Investigating Officer on demand and certain original documents are not available with them and even the bank's lawyer was given xerox copies of the original documents and not the original.

9. On earlier occasion, the papers of investigation

were brought before the Court and on close reading of the opinion expressed by the advocate of the bank, it emerges that certain original documents were given to the advocate and they are mentioned/reflected in the opinion given by her. According to Mr.Jadeja, learned counsel appearing for the orig.complainant, the original documents were taken away by the petitioners apprehending that they may be used against them in the criminal proceedings, if initiated.

10. I have perused the papers of investigation and it is confusing whether all the original documents were ever tendered either to the Bank or the lawyer. Ultimately, the allegation is of forgery and Mr.Jadeja has pointed out that for one of the documents an attempt was made, even by the petitioners, to get favourable opinion from the hand-writing expert and without disclosing the source Mr.Jadeja has fairly accepted that the complainant was able to secure a copy of the opinion expressed by the hand-writing expert obtained by the petitioners-accused from their file. Mr.Raju, in response to this argument, has clarified that a forwarding letter in respect of sending the documents to the hand-writing expert clearly reveals that only the copies were sent to the expert and not the original documents. Without commenting upon the opinion expressed by the hand-writing expert, it is prima facie clear that at least the original documents were not sent to the hand-writing expert because all these documents are now part of papers of investigation.

11. A short question before the Court at present is whether in light of the decision of this Court in the case of Shashibala Sharma v. State of Gujarat, reported in 2004(3) GLH 15, the present petition should be dismissed or the say of Mr.Raju should be accepted that this is not a case where custodial remand would be necessary to unfold the true facts.

12. Mr.Raju, learned counsel appearing for the petitioners-accused, has relied on the following decisions in support of his submissions :

(i) 1980 (2) SCC 565
Shri Gurbaksh Singh Sibbia and others
Versus
State of Punjab.

(ii) 1978 (2) SCC 365
Miss Harsh Sawhney
Versus
Union Territory (Chandigarh Admn.)

(iii) AIR 1965 SC 1251
State of Gujarat
Versus
Shyamal Mohanlal Choksi

13(i) The basis submission of Mr.Raju is that a quashing petition was initiated to turn down the FIR under Section 482 of the Code of Criminal Procedure, though has been withdrawn by the present petitioners, would not make the order of grant of police remand a good legal order.

13(ii) However, this is not a case wherein custodial remand could have been granted and hence, this is a case of improper exercise of jurisdiction and the petitioners-accused should not be compelled to face the custodial interrogation merely because the Investigating Agency intends to either recover any property or document by way of recovery or discovery.

13(iii) It is relevant to point out that after considering the entire say of the prosecution, this Court has granted anticipatory bail and after the arrest, no police remand was sought for immediately and when there is no document in the papers of investigation that the petitioners-accused or any of them were ever called positively for production of particular original document by the police, grant of police remand in such a case would not be either legal or proper.

13(iv) There is some force in the arguments of Mr.Raju that custodial interrogation is not at all warranted even after getting anticipatory bail and their enlargement on advance bail make the petitioners-accused in deemed custody and the Investigating Agency can call the accused for interrogation and if such accused fails in cooperating with the investigation, the Investigating Agency can pray for cancellation of such anticipatory bail. In response to the query raised by the Court, Ms.N.V.Joshi, has clarified that for alleged non-compliance of the order of anticipatory bail till date, the State has not preferred any proceedings for cancellation of bail of the petitioners, the Court may pass appropriate orders.

14. It is still open for the Investigating Officer to call the petitioners and record statements of petitioners or of any witnesses or their further statements. According to Mr.Raju, the petitioners are even ready to

cooperate with the investigation and they can be so directed.

15. It is not necessary to reproduce the relevant para:19 of the decision reported in 1980(2)SCC (supra) but the ratio of the decision is self-explanatory. The observations made by this Court in the case of Shashibala Sharma (supra) would not be applicable to the facts of the present case because the said case was much grave in nature and a lady was found responsible by the Court for huge wrong and for creation of forged documents and thereby siphoning off the Government money.

16. In view of the above, the present petition is hereby allowed and the order dated 21st April, 2005, granting police remand for five days is hereby quashed and set aside as the same is bad and not sustainable in the eye of law and as this case does not fall in the category where the police remand can help the Investigating Agency.

17. The Court is not able to accept the arguments advanced by Mr.Jadeja without entering into the controversy as his entitlement to address the Court on merit, he was permitted to assist the Court, that if the Court finds that period of police remand for five days is much longer then the same can be curtailed because the Court is of the view that this is not a case wherein the police remand could have been granted in view of the detailed order passed granting anticipatory bail, on failure to interrogate the petitioners-accused in detail between the period i.e. 22nd February, 2005 to 1st March, 2005. However, the petitioners are directed to cooperate with the investigation and they should present themselves on receipt of the intimation from the concerned Investigating Officer as and when called for for drawing either recovery or discovery panchnama, failing which the respondent-State can take appropriate steps for cancellation of anticipatory bail.

Rule is made absolute accordingly.

Direct Service is permitted.

Order accordingly.

(C.K. Buch, J)

Aakar